Filed 10/7/04 Krisha H. v. Superior Court CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

KRISHA H., Petitioner, v. THE SUPERIOR COURT OF THE COUNTY OF SAN BERNARDINO, Respondent; SAN BERNARDINO COUNTY DEPARTMENT OF CHILDREN'S SERVICES, Real Party in Interest.	E036410 (Super.Ct.Nos. J186172-J186174) OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Robert G. Fowler, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

William E. Drake for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

Petitioner Krisha H., the mother of S. O., B. O. and S. C.,[1] filed this writ petition pursuant to California Rules of Court, rule 39.1B, challenging an order setting a Welfare and Institutions Code section 366.26[2] permanency planning hearing as to the children. Mother contends the juvenile court's order setting the hearing is not supported by substantial evidence. We disagree and deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On January 13, 2003, the children were taken into the protective custody of the Department of Children's Services (hereafter DCS) following an immediate referral from the Colton Police Department after an officer found S. O. standing in front of her house crying. The officer entered the residence and found the other two children were alone and unattended. The home was unsafe with rotten food and feces on the floor and spoiled food in the sink, but no edible food in the house. The family was known to DCS with about five prior referrals beginning in March 1999 and a prior voluntary family maintenance case.

On January 15, 2003, section 300 petitions were filed. Following a detention hearing, the children were placed in the custody of DCS. The social worker's jurisdictional/dispositional reports set forth facts that substantiated the petition and recommended that the court sustain the petition, but return the children to their mother's

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[1] S. O. was born in February 1999, B. O. was born in September 2001, and S. C. was born in October 2002.

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

custody and provide family maintenance services. According to the social worker, the prognosis for the family was good. Following the jurisdictional/dispositional hearing, the juvenile court found the petition was true and returned the dependent children to mother under the supervision of DCS.

The children were again removed and placed in protective custody following an unannounced visit to the home by the social worker on May 21, 2003. The home was filthy and mother was sleeping at 3:00 p.m. After a hearing on May 27, 2003, the juvenile court ordered the children placed in the custody of DCS and detained in confidential foster care.

On July 16, 2003, following a contested hearing on subsequent/supplemental petitions, the juvenile court ordered the children continued as dependents of the court with reunification services for mother. A section 366.21, subdivision (e) review hearing was calendared for September 30, 2003, but mother did not attend and the court scheduled a section 366.21, subdivision (f), hearing. Following that hearing, the juvenile court found mother had failed to participate and complete the court-ordered plan, but ordered three more months of services.

On August 11, 2004, a contested section 366.22 hearing was held at which mother and the social worker testified and the social worker's reports were received in evidence.

The social worker testified that while mother had completed her parenting and anger management courses, she had not completed her substance abuse and psychological treatment. She had started and stopped the treatments several times. She

did not have stable housing; she was residing in the inpatient program at Cedar House and was homeless before entering Cedar House. She had failed to complete her random drug tests on three separate occasions. She "self-discloses bipolar disorder" and was "pending treatment at Cedar House for that." She was pregnant and due to deliver in October 2004. Maple House provides a residence where she could have treatment while the children resided with her, but she would need to complete Cedar House first "to show that she's actually ready and prepared to enter into that program." It was the social worker's opinion that the children would be detrimentally affected by the termination of their relationship with their mother just as many children are affected. But, the social worker recommended terminating services because "[o]ver the last 18 months, [she] has not consistently participated in a program or demonstrated that she is willing and able to care for her kids at this time." It was the social worker's opinion that the children could not safely be returned to mother's custody based on her lack of participation and failure to demonstrate her ability to parent the children by making positive life-style changes and participating in the programs. DCS had a presentation meeting pending with an adoptive family for all three of the children.

Mother testified she had been in and out of programs, but she had completed her parenting and anger management classes. She had been in Cedar House for 60 days and had been randomly drug tested there. While Maple House is an in-treatment program for parents with children, she did not qualify because she "went in under detox pretenses . . . . And they have a two-child limit." She was on a waiting list for a facility

that accepts three children. She did not complete her perinatal program. She started using drugs again when "[t]hings with the person [she] was with went bad." She was unable to reassure the court that she would not relapse again because she "can't tell you what's going to happen from five minutes from now." She was attending mental health counseling, but she was in "an exiting class" to help her "get things structured, set up, ready to go" so she would "leave with a progress plan" and "with places to go" when she was released in early September. She suffers from "severe depression," but cannot take psychotropic medications while she is pregnant.

After stating it had read and considered the social worker's reports and had listened to mother's testimony, the juvenile court terminated reunification services and set a section 366.26 hearing with visitation pending the hearing. The juvenile court found mother was "making strides," but "wish[ed] she had been doing this six months ago." The court "appreciate[d] mother's honesty and her candidness saying she doesn't know what's going to happen five minutes from now, . . ." The court found "by clear and convincing evidence that [she had] failed to participate regularly and/or complete the court-ordered treatment program. [¶] The extent of progress made towards alleviating [the] causes necessitating placement . . . has been minimal [and] not complete at this particular point. [¶] The Court [found] it's in the best interest of the children who are in a sibling group, as described under [section] 361.5[, subdivision] (a)(3), that a .26 hearing be scheduled" for the purpose of maintaining the siblings together in a permanent home.

Section 361.5, subdivision (a)(3), cited by the juvenile court provides that, for purposes of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, court-ordered services may be limited to a period of six months where one member of the sibling group was under the age of three years at the time of removal from parental custody. It also provides that "court-ordered services may be extended up to a maximum time period *not to exceed 18 months* after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period *only* if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian." (Italics added.)

Here, two of the children were under three years of age when they were removed from mother's custody in January 2003: S. C., who was born in October 2002, was only three months old and B. O., who was born in September 2001, was only sixteen months old. S. O., the oldest child, was born in February 1999 and was only four years old. No one is disputing that reasonable services were provided to mother and the return of the children to mother's custody for a brief period did not serve to interrupt the running of the 18-month period specified in section 361.5, subdivision (a)(3). (§ 361.5, subd. (a)(3).) Consequently, the juvenile court was authorized to extend time *not to exceed 18*

months from the date the children were removed from mother's custody *only* if it could find there was a substantial probability the children would be returned to her custody without detriment to the children. More than 18 months had elapsed when the August 14, 2004, hearing was held and the juvenile court determined it could not make such a finding.

Contrary to mother's assertions, the juvenile court's finding is amply supported by the record which establishes: The children initially were removed from mother's custody because they were left alone and unsupervised in a filthy residence with no edible food. Although they were returned to her custody, they were removed again and the juvenile court found the allegations of the supplemental petition were true on July 16, 2003. The supplemental petition alleged mother failed to provide the children with a safe and sanitary home and with adequate provisions of care; she failed to enroll and participate in and/or complete her court-ordered service plan, including mental health treatment and stabilization; and she had a history of chronic substance abuse which affected her ability to parent and care for her children. The reports received by the juvenile court as well as the testimony from the social worker and mother established that she suffers from a mental illness; she has started and stopped her treatment and has not completed it; she was residing in Cedar House which could not accommodate the children; she was on a waiting list for a facility that would accept three children and she was pregnant with a due date in October 2004. Also, her testimony established that she is unable to predict that she will act responsibly and provide the children with the necessary protection and

care. Thus, the record contains reasonable, credible evidence of a substantial risk of detriment to the children if they are returned to mother's custody.

Mother's argument the children could have been placed with her in Maple House is rebutted by her own testimony that the facility would not accept three children and she was on a waiting list for a facility which would. Also, she may need a facility that will accept four children since she is pregnant with an expected date of delivery of October 2004. Mother's assertion that she and the children share a substantial bond and they will be detrimentally affected by the termination of their relationship is supported by substantial evidence. But, the children will be affected no more than other children in similar circumstances and less detrimentally affected than they will be if they are returned to mother's custody in view of her failure to make positive life-style changes and to demonstrate her willingness and ability to provide and care for them at this time. Also, there is a prospective adoptive family that will accept all three children and this would ensure the bonds the children have established with each other will remain intact.

Thus, the record contains substantial evidence, that is reasonable in nature, credible, and of solid value and which is substantial proof of the essentials which the law requires in this particular case. (See *In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1068.)

DISPOSITION

The petition is denied.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

GAUT
J.